

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

THE OHIO CASUALTY INSURANCE )  
COMPANY, )

Plaintiff, )

vs. )

ALBERS MEDICAL, INC., et al., )

Defendants. )

Case No. 03-1037-CV-W-ODS

ORDER AND OPINION GRANTING PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT REGARDING DUTY TO DEFEND H.D. SMITH WHOLESALE DRUG  
COMPANY

On February 9, 2006, Plaintiff filed a Motion for Summary Judgment, seeking a ruling that it has no duty to provide a defense to H.D. Smith Wholesale Drug Company ("H.D. Smith"). Plaintiff filed an Amended Motion on April 17. On May 19, Plaintiff and Defendant Albers Medical, Inc. ("AMI") filed a Stipulation indicating, *inter alia*, H.D. Smith's counsel declared he would not be filing Suggestions in Opposition to Plaintiff's motions. Indeed, the deadline for doing so has passed, see Local Rule 56.1(b), and H.D. Smith has not responded to the motions.

The Court hereby grants Plaintiff's motions. This Order should not be construed as determining whether the Vendor Agreement between AMI and H.D. Smith is an "insured contract" under the insurance policy Plaintiff issued to AMI. This issue need not be decided in order to grant Plaintiff's motions, and the matter will likely be fully contested between AMI and H.D. Smith.

Partial summary judgment is granted to Plaintiff, and the Court rules Plaintiff has no obligation to provide a defense to H.D. Smith.

IT IS SO ORDERED.

DATE: September 5, 2006

/s/ Ortrie D. Smith  
ORTRIE D. SMITH, JUDGE  
UNITED STATES DISTRICT COURT